

From: [Katherine Lindell](#)
To: [DLNR.BLNR.Testimony](#)
Subject: Re: Public Testimony: 10/26/2018 BLNR meeting, Agenda Item J-3
Date: Monday, October 22, 2018 10:43:36 AM

Aloha,

RE: BLNR Meeting, Friday, October 26th, 2018; Agenda Item J-3, “Request approval to initiate Rule-Making Proceedings, including Public Hearing, to amend and compile Title 13, Hawai‘i Administrative Rules (HAR), Chapters §13-234, Fees and Charges”

PLEASE CONFIRM RECEIPT OF THIS TESTIMONY

NOTICE: THIS TESTIMONY WILL BE PUBLISHED ONLINE SO THAT HAWAII BOATERS MAY HAVE THE OPPORTUNITY TO REVIEW AND COMMENT FURTHER ([LINK HERE](#))

This testimony is intended for the *Board of Land and Natural Resources*:

Suzanne D. Case, Chairperson

Stanley H. Roehrig, Hawai‘i Member (Term: 7/01/14 – 6/30/18)

Keith “Keone” Downing, At-Large (Term: 7/01/17 – 6/30/21)

James A. Gomes, Maui Member (Term: 7/01/17 – 6/30/21)

Thomas Oi, Kauai Member (Term: 7/01/16 – 6/30/2020)

Samuel “‘Ohu” Gon III, O‘ahu Member (Term: 7/01/17 – 6/30/21)

Christopher Yuen, At-Large (Term: 7/11/14 – 6/30/18)

TESTIMONY:

The Chapter §13-234 proposal, in its present form, is so flawed both legally and ethically that it can't possibly be considered anything more than a pre-draft. In its current form it openly lies to the public and patently discriminates against owners of smaller vessels, charges for non-existent facilities and services never rendered, and makes unjustifiable requests of the Hawaii boating public to come up with even more money (boaters have just finished paying off the last increase) in harbors that are already producing \$millions in profit while ignoring a solid fiscal plan for those that are failing. Additionally it fails miserably to address the more serious and immediate problems facing the harbor system like harbor drug crime spillover into high-trafficked visitor areas and raw human waste pollution of harbors, beaches and surf spots along our coastline. The complete lack of a State-provided

blackwater pump-out option for a harbor with a thousand boats may be a Federal EPA violation. See the mini-documentary about the current state of our public harbor system: ([LINK](#))

1. The word "Usage" in §13-234-10 is ***deliberately misleading, essentially lying to Hawaii's public*** that harbor tenants will pay a 1000% increase for the ***consumption or "use"*** of electricity at their pier. The Board will need to change the wording in this section so that it accurately describes the burden on the harbor tenant. The wording should be: "harbor tenants on non-HECO monitored piers will be assessed a 1000% increase over current flat-rate charges; the flat-rate charge gives tenants ***potential access*** to an electrical outlet, completely ignoring actual electrical consumption."

a) §13-234-10 electrical fee increase ***blatantly discriminates*** against owners of smaller vessels in the harbor system. Larger vessels require larger amounts of electricity while smaller vessels use relatively little, generally speaking, which forces smaller vessels to subsidize the electrical usage of larger vessels on the grid. Patently unfair and an invitation to legal challenge.

b) The §13-234-10 proposal ***completely ignores the State of Hawaii's Green Energy Initiative***; the use of alternative energy to supply electricity. There isn't even mention of an exemption for those vessels that are generating all of their own electricity, completely off the grid, in step with the State's alternative energy goals. This is particularly disturbing in light of the fact that Board Chair, Suzanne Case, would have us believe that she's committed to Green Energy.

2. The word "Usage" in §13-234-11, \$15 monthly fee for the "use" of the bathroom facilities is, again, grossly misleading, and should read: "A new \$15 ***per month*** charge will be levied on all tenants who have in their possession a key-card that grants access to the card-key bathrooms, ***whether you actually use those bathrooms or not.***" This new levy is nothing more than a flat-rate monthly charge for having a bathroom card in one's possession. "Use" has nothing to do with it, because if it did, the State does, in fact, have the technology in place right now to monitor "usage" in the card-key bathrooms and therefore charge accordingly. This latter alternative seems completely missing in this document.

3. §13-234-3 Slip fee increases: ***Fee increases for the harbors that operate in the black are clearly unnecessary. Responsible fiscal management requires failing harbors to bring in revenues that will assure those facilities to at least operate break-even.*** They have that potential. There is tremendous demand for these slips. There are 11 failing harbors. There are 3 profitable harbors. Responsible fiscal management of our harbor facilities requires that excess revenues from successful harbors be reinvested back into those same harbors while failing harbors see revenue modifications that make them solvent. Ask any real-world businessman or woman and he or she will tell you the same exact same thing.

a) ***The "slip-size" clause in this same section patently discriminates against tenants with smaller boats***, that they must pay for their slip size vs their vessel size. As a

result these smaller vessels will be called upon to pay more than their fair share, while owners of larger vessels will continue to pay for their vessel size.

b) The clause in this section suggesting that multihulls pay double should NOT be a blanket assessment. There are different kinds of multihulls with widely different dimensions, some friendly to our slip sizes, and others needing end-piers. This is a complex subject and should not be treated with the simplistic logic of a five-year-old.

c) The monthly slip fee payment deadline of the 4th of each month vs the end of the month, as it now stands, will cause an unnecessary hardship for boat owner aunts and uncles on fixed incomes who receive their pension check on a date subsequent to the 4th. Hogtying the public with this rule is unnecessary and harmful.

4. §13-234-7 (2)(b) Large transient fee increases sees the State of Hawaii cashing in on the well known slip shortage problem, a problem, in part, created by the State in the first place. The transient system is one of the options to local boaters, buying them time to find a permanent slip for their vessel. The up to 500% increase in fees (along with §13-234-9) suggested in this section will make the process of coming up with decent permanent mooring just that much tougher, making for an even more stressful experience than is already the case. **Raise the transient fees for out-of-state boats, not local boats. For those actually familiar with the difficulty in finding suitable mooring in the State of Hawaii, this is nothing more than common sense.**

5. §13-234-4, Offshore Mooring Rate increase of up to 500%: Once again, here we find grossly misleading verbiage attempting to convince the uninitiated that the State of Hawaii actually has facilities for vessels moored offshore, on their own tackle, in remote locations and therefore needs to charge for the "use" of these. "Use" being the favorite lie in this document, I would suggest that any of you on the Board who have the experience for off-shore sailing in Hawaiian waters, that you try anchoring off the west coast of Lanai (a favorite anchorage for experienced sailors) and then locate and "use" all or some of the "many facilities" available there. You may find, as is the case with most of Hawaii's offshore anchorages, that there is nothing that might be construed as a "facility" for visiting sailors. Nothing.

Members of the Board, you are being asked to approve a document that, in its present form, suggests that agency operatives within the State of Hawaii have neither the good sense nor the business acumen to responsibly and properly manage public harbor fiscal affairs. Please see the following video for a real-world update on the current state of our public harbor system and our ocean recreation environment: <https://www.youtube.com/watch?v=Fjb9Kkv7F5g> .

Given the misleading verbiage in some parts of the document, it is surprising, if not alarming, that the Board Chair, Suzanne Case, holding a degree in law, would allow the Chapter 13-234 proposal to even be considered for approval.

Frankly, **there are legal issues with parts of this document and blatant attempts to**

mislead the public, as noted above. Our hope is that the proposal will be properly amended before receiving the Board's approval. If not, concerned harbor tenants and members of the ocean recreation community should be advised to reach out to federal agencies and public legal aid for additional help.

Sincerely,

Katherine Lindell